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MORRIS COUNTY

RICHARD B. TOWNSEND
COUNTY AND DISTRICT ATTORNEY
76TH & 276TH JUDICIAL DISTRICTS

August 28, 1991

RQ-161

Madeleine Johnson
Chair of Opinion Committee
P. O. Box 12548
Austin, TX 78711

RECEIVED

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Opinion Committee

Dear Ms. Johnson:

As County Attorney for Morris County, I am hereby requesting an Attorney General's opinion on the following matter. The subject of this opinion is described in the facts and question related on the following pages.

Sincerely,

A handwritten signature in cursive script that reads "Richard Townsend".

Richard Townsend

RBT/pv

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

Brief submitted by:

Richard Townsend

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STATEMENT OF FACTS

Broventure, Inc., owners of Broseco Ranch, filed suit in District Court to prevent Morris County from reopening an old county road, which was the subject of a dispute between the two parties as to which one was the rightful owner of the road right-of-way. Broventure, Inc. was attempting to keep the road closed and to prevent access to that road for other landowners who might want to utilize it. Tom Tucker and Jimmy Vissering were two other land owners. They, in turn, have filed suit against Broventure seeking access to their land through the old county road. After these lawsuits were heard in District Court, Broventure prevailed. Mr. Tucker and Mr. Vissering are now seeking to have their attorney fees paid by the Morris County Commissioner's Court.

QUESTION

Would the payment of Mr. Tucker and Mr. Vissering's attorney fees constitute the use of public tax funds for a public purpose as described in the Texas Constitution, Article 3, Section 52, Article 8, Section 3 and Article 11, Section 3?

List of Authorities

Texas Constitution, article 8, section 3

Texas Constitution, article 11, section 3

Texas Constitution, article 3, section 52

The question posed at this time requires a look at the State Constitution. The State Constitution requires the County expenditures be made only for a proper public purpose and that a County is essentially prohibited from donating its money or property for private purposes. (Vernon's Ann. Texas Constitution, Art. 2, Sec. 52; Art. 8, Sec. 3; Art. 11, Sec. 3) If the expenditure of public funds is designed to serve a legitimate governmental function, it is not automatically constitutional if it also serves private concerns. The chief test of what is taxation for public purpose is that the public generally must have a direct interest in the purpose for which tax money is to be spent and the community at large must be benefited. Additionally, the county government must maintain some control over the funds, either under the terms of a contract with private parties or by performing some function to insure that a public purpose will be achieved. Public money may also generally be spent when it is not feasible or practical for private enterprise to engage in such an activity.

Article 8, Section 3 of the State Constitution says the following in full: Taxes shall be levied and collected by general laws and for public purposes only. Article 3, Section 52A provides: The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. Article 11, Section 3 of the Constitution provides: No county, city or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association or make any appropriation or donation to the same or in anywise, loan its credit.

The notion of a proper public purpose is a changing concept. In recent years, counties have been authorized by the State Legislature to foster economic development through the issuance of bonds and to assume a more forceful role in the local economy. To a great extent, the question of whether public funds are spent for proper public purpose is a matter of personal opinion. The courts seem to subject such a question to a rather liberal analysis. However, if a county should expend its resources in a manner which benefits, to an unreasonable extent, a private concern or individual this act may very well be prohibited by Article 3, Section 52, which prohibits the donation of county money and property.

It might be good to look at a few opinions. For instance, Attorney General opinion MW-36, 1979, is a good example of the application of a public purpose doctrine. The question was whether a county may expend county tax funds to purchase and send out Christmas cards. One could

argue that as a promotional gesture of good will, it might indirectly be to the benefit of the county and therefore proper expenditure. However, the Attorney General opinion disagreed with that argument and said it was an improper use of public funds, citing a violation of article 3, section 52, which prohibits grants oppose money. Actually article 8, section 3 might also apply, which requires the public funds be spent for proper public purpose.

In looking at other situations, Weaver vs. Scurry County, (Civil Appeals, 28 SW 836), Bounty payment for the destruction of wolves and other wild animals for the protection of stock raisers was deemed to be acceptable by the court as a proper public purpose. In Davis vs. the City of Lubbock (325 SW 2nd 699, 1959), requiring slum areas by the city of Lubbock to be a proper public purpose as benefiting the city as a whole by cleaning up those areas.

Attorney General's opinion 1939, Number 690: spending public funds for a private library is not a proper public purpose. Attorney General's opinion 1940, Number D-2497: paying for the personal expenses of the National Guard members is not proper public purpose.

So it seems that the fact that private concerns may directly or indirectly be benefited by the expenditure of public funds does not necessarily render such use of money when permissible. One guidepost seems to be the number and class of persons designed to be benefited by governmental action. Apparently, if a large number of persons were to be served or benefited, it is more likely that a proper purpose would be found. With the question posed for this opinion, there seems to be no benefit to the public at large in Morris County, Texas by the expenditure of public funds to help pay attorney fees for Tom Tucker and James Vissering. It would seem that the only benefit provided by such an expenditure would be to those two individuals. It would therefore be my opinion after reviewing court cases and Attorney General opinions that such an expenditure would not be for a proper public purpose.

/s/ Richard B. Townsend

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